

REMARKS

Entry of the foregoing, reexamination and reconsideration of the subject application are respectfully requested in light of the amendments above and the comments which follow.

As correctly noted in the Office Action Summary, claims 1-14 were pending. By the present response, claims 2-4 and 6-14 have been amended, claims 1 and 5 canceled, and claims 15-21 added. Thus, upon entry of the present response, claims 2-4 and 6-21 remain pending and await further consideration on the merits.

Support for the present claim amendments can be found, for example, in at least the following portions of the disclosure: Figs. 1 and 2 and the specification, paragraphs [0015], [0018] - [0023] and [0025] - [0029].

CLAIM REJECTIONS UNDER 35 U.S.C. §103

Claims 1-7 and 11-14 stand rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 4,761,294 to Hamann et al. (hereafter "*Hamann et al.*") in view of U.S. Patent No. 5,589,213 to Desai et al. (hereafter "*Desai et al.*"), and U.S. Patent No. 4,900,576 to Bonnett et al. (hereafter "*Bonnett et al.*"), and U.S. Patent No. 4,927,653 to Manvell (hereafter "*Manvell*") on the grounds set forth beginning at paragraph 3 of the Official Action.

Claims 1 and 5 have been canceled. Thus, the rejection of these claims is moot.

Also, claims 2-4 and 11-14 have been amended to depend directly or indirectly from claim 9, which was not included in this rejection, thereby obviating the rejection of these claims.

In addition, claim 7 has been amended to include subject matter of claim 9 , which was not included in this rejection. Accordingly, Applicants respectfully assert that amended claim 7 distinguishes over the cited documents for at least the same reason that claim 9 does.

From the above, withdrawal of the rejections of claims 1-7 and 11-14 is respectfully requested.

Claims 8-10 stand rejected under 35 U.S.C. §103(a) as being unpatentable over *Hamann et al.* in view of *Desai et al.*, *Bonnett et al.*, and *Manvell* and further in view of U.S. Patent No. 4,579743 to Hullah (hereafter "*Hullah*") on the grounds set forth beginning at paragraph 10 of the Official Action.

Independent claim 9 recites that a method of preparing French fried potato pieces includes obtaining frozen, par-fried potato pieces, storing the frozen par-fried potato pieces, surface pasteurizing the potato pieces in a pasteurization apparatus having an exit into a clean room environment, and packaging the potato pieces in a modified atmosphere in a clean room environment after the step of surface pasteurizing the potato pieces. The claim recites that the modified atmosphere includes about 5.0% O₂, from about 0% to about 15.0% CO₂, and from about 0% to about 80% N₂.

The disclosures in *Hamann et al.*, *Desai et al.*, *Bonnett et al.*, and *Manvell* are silent with respect to the composition of the modified atmosphere. The specification

discloses that the choice of modified atmosphere contributes to the increased shelf life of the products of the claimed method. See, for example, paragraph [0015].

In view of the deficiencies in *Hamann et al.*, *Desai et al.*, *Bonnett et al.*, and *Manvell*, the Official Action relies on the disclosures in *Hullah*. However, the combination of the cited references, either alone or in combination, does not teach, disclose, or suggest Applicants' independent claim 9.

Specifically, *Hullah* is relied upon for its disclosure of an "inert gas-packed atmosphere". The "inert gas-packed atmosphere" of *Hullah* has "about 10-35% CO₂, the remainder comprising N₂ or another inert gas." See column 5, lines 49-51. However, and in contrast to Applicants' claim 9 method, *Hullah* discloses that "No more than about 1.0% and preferably less than about 0.9% residual oxygen should be present." See, column 5, lines 51-53. Thus, the combination relied upon by the Examiner does not suggest to one of ordinary skill in the art a method of preparing French fried potato pieces wherein a modified atmosphere includes about 5.0% O₂. For at least this reason, the rejection should be withdrawn.

In addition, the disclosure in *Hullah* that "No more than about 1.0% and preferably less than about 0.9% residual oxygen should be present" teaches away from Applicants' claim 9 wherein the modified atmosphere includes about 5.0% O₂. For at least this additional reason, the rejection should be withdrawn.

In summary, there is no disclosure, teaching or suggestion in the disclosures of *Hamann et al.*, *Desai et al.*, *Bonnett et al.*, and *Manvell*, or *Hullah*, regardless of whether these documents are considered individually or in combination, for a method of preparing

French fried potato pieces as presented in Applicants' independent claim 7 and claim 9.

Further, the combination relied upon by the Examiner, particularly *Hullah*, expressly teaches away from Applicants' claims. Accordingly, the rejection of independent claim 9 should be withdrawn.

The remaining claims depend from independent claim 9 and are distinguishable over the cited references for at least the same reason as claim 9.

Further, amended claim 7 is distinguishable over the cited references for at least the same reason as claim 9.

NEW CLAIMS

New claims 15-21 present combination of features of an exemplary method of preparing French fried potatoes that distinguish over the cited document. The claimed method recited in claim 15 includes several steps that individually provide barriers to, amongst other things, improve shelf-life. Further, the aggregate of each of these barriers in a single method provides improved shelf-life for the food product.

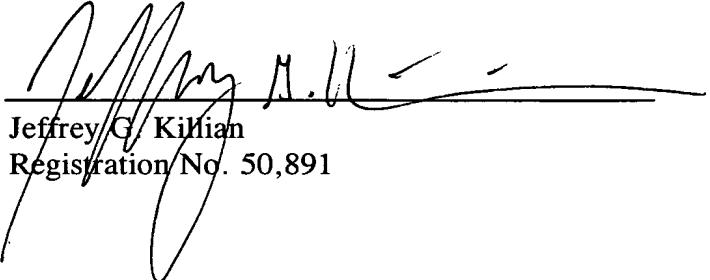
CONCLUSION

From the foregoing, further and favorable action in the form of a Notice of Allowance is earnestly solicited. Should the Examiner feel that any issues remain, it is requested that the undersigned be contacted so that any such issues may be adequately addressed and prosecution of the instant application expedited.

Respectfully submitted,

BURNS, DOANE, SWECKER & MATHIS, L.L.P.

By:


Jeffrey G. Killian
Registration No. 50,891

P.O. Box 1404
Alexandria, Virginia 22313-1404
(703) 836-6620

Date: December 8, 2003